

IN THE MATTER OF:	)	SETTLEMENT AGREEMENT
	)	
Former Kaiser Smelter Site	)	U.S. EPA Region X
Mead, Spokane County, Washington	)	CERCLA Docket No. ____
	)	
Spokane Recycling <u>Company</u> , LLC	)	PROCEEDING UNDER SECTION
SETTLING PARTY	)	122(h)(1) OF CERCLA,
	)	42 U.S.C. § 9622(h)(1)

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## I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and further redelegated by the Regional Administrator of EPA Region X to the Branch Chief of the Emergency Management Branch by Delegation No. R10 14-14-D, Apr. 15, 2019. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to [insert DOJ delegate].

Commented [A1]: EPA/DOJ will insert this at a later date.

2. This Settlement Agreement is made and entered into by EPA and Spokane Recycling Company, LLC, as well as its corporate shareholders, officers and directors (collectively, "Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

## II. BACKGROUND

3. This Settlement Agreement concerns the Former Kaiser Smelter Site ("Site") located in Mead, Spokane County, Washington. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site consists of a former aluminum smelter facility, as well as a stormwater conveyance and settling pond system for stormwater generated at the former aluminum smelter facility. Parcel 36165.9016, the specific location of former aluminum smelter facility, contains dozens of multiple large industrial buildings, a baghouse, administrative buildings, a network of stormwater catch basins, sumps, storage tanks, a rail spur, and other facility operational features. The former facility's system of catch basins and storm sewers for the former aluminum smelter facility collect and divert stormwater through a half-mile long aqueduct flowing north from the facility pursuant to existing stormwater easements to a pair of settling ponds, located on separate property identified as Parcel 36096.9063. At the northern end of the lower settling pond, a pipe transfers the water through a second aqueduct that runs approximately 1.25 miles to separate property identified as Parcel 36033.0111 where an effluent outfall discharges stormwater into Deadman Creek.

5. The aluminum smelter was constructed on Parcel 36165.9016 in 1942, and smelter operations continued through 2000. Ownership of Parcel 36165.9016 the Site shifted through multiple entities from 2000 to the present, and past owners of Parcel 36165.9016 conducted various demolition projects during that time.

Commented [A2]: SRC is checking its files, but we would like to add more detail about these projects if EPA has specific information or documents.

6. A portion of Parcel 36165.9016 the former smelter property was placed on the Superfund National Priorities List (NPL) in 1983. The 50-acre NPL Site, known as the Kaiser Aluminum – Mead Works Potliner Superfund Cleanup Site, is currently owned and/or controlled by a trust the Mead SPL Site Custodial Trust (Trust), which is conducting a long-term remedy for the NPL Site that is overseen by Ecology. The NPL Site consists of spent potlining solid waste, a 25-acre wet scrubber sludge bed, and a plume of groundwater contaminated with cyanide and

fluoride. The NPL Site is ~~separate from and outside the boundaries of~~ the Site subject to this Settlement.

7. The Site is a place where hazardous substances, including but not limited to polychlorinated biphenyls ("PCBs"), asbestos, and polycyclic aromatic hydrocarbons ("PAHs"), including benzo(a)pyrene, have been released or disposed, or have otherwise come to be located.

8. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

9. In February 2019, EPA conducted a Preliminary Site Assessment, ~~and in~~ In May 2019, EPA conducted a Removal Site Assessment to determine the extent and exposure risks of ~~contamination~~ hazardous substances at the Site. EPA ~~selected~~ response actions for the Site to address release and threats of releases of PCBs, asbestos, PAHs, and other hazardous substances or pollutants or contaminants. Response actions to be performed include removal of asbestos and PCB-contaminated building siding, asbestos-containing pipe insulation, waste piles, green coke, and coal tar pitch, as well as removal of contaminated water and sediment from the stormwater conveyance system and settling ponds, and installation of a new stormwater management system for stormwater generated at Parcel 36165.9016.

10. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

11. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

12. EPA has reviewed the Financial Information and Insurance Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

13. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability under CERCLA or any other federal, state or local law or regulation regarding the presence, handling, management, transport, release or disposal of hazardous substances on, beneath or from the Site. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of ~~the~~ any facts or allegations contained in this Section.

### III. PARTIES BOUND

14. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or ownership of real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement.

Commented [A3]: EPA decisions documents (Action Memoranda) are going through the review process now. I will let you know when they are final and will provide you with copies.

Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

#### IV. STATEMENT OF PURPOSE

15. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by requiring Settling Party to cooperate with EPA's planned response actions at the Site, and by allowing Settling Party to provide a future cash payment from a future sale of Affected Property and to make a cash payment and to by implementing land use restrictions to address ~~its all of Settling Party's~~ alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

#### V. DEFINITIONS

16. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site, ~~including and any other real property, but not limited to the Property owned or controlled by Settling Party,~~ where EPA determines, ~~at any time,~~ that access or use restrictions for land, water, or other resources ~~use restrictions~~ are needed to implement response actions at the Site, ~~including, but not limited to, the following properties Parcel Numbers 36165.9016, and 36033.0111, in Mead, Spokane County, Washington.~~

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

"EPA" shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Financial Information" shall mean those financial documents identified in Appendix A.

"Insurance Information" shall mean those insurance documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each calendar year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each calendar year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA and Settling Party.

“Property” shall mean that portion of the Site that is owned and controlled by Settling Party as of the Effective Date. The Property is located generally at 2111 East Hawthorne Road, Mead, Spokane County, Washington, and is designated ~~by as the following property description:~~ Parcel Numbers 36165.9016, and 36033.0111.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean Spokane Recycling Company, LLC, including its corporate shareholders, officers and directors, as well as its successors and assigns.

“Site” shall mean the Former Kaiser Smelter Superfund Site, encompassing approximately 600 acres, located at Parcel Numbers 36096.9063, 36165.9016, and 36033.0111 in Mead, Spokane County, Washington and generally shown on the map included as Appendix C.

“Former Kaiser Smelter SiteSpecial Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” shall mean the State of Washington.

“Transfer” shall mean to sell, assign, convey, ~~lease~~, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any ownership or controlling interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

## VI. PAYMENT OF RESPONSE COSTS

### 17. Payment of Net Proceeds of Sale of Property

a. **Appraisal of Property.** Within 30 days after receipt of a written request from EPA and prior to any sale of the Property, Settling Party shall submit to EPA the names of one or more appraisers. The appraisers identified shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. EPA may, within 30 days thereafter, disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by EPA, Settling Party shall, within 15 days after such disapproval, submit names of additional appraisers, which shall be subject to EPA's disapproval as provided above. Any appraisers not disapproved by EPA shall be deemed to be approved. Settling Party shall, within 60 days after the deadline for EPA's disapproval of the proposed appraisers, obtain an appraisal of the Property. The appraisal shall be performed by any appraiser deemed to be approved. Settling Party shall be responsible for all appraisal fees. Settling Party shall submit a copy of the appraisal to EPA. If the Property is not sold within one year of the date of the appraisal, and if EPA so requests, Settling Party shall obtain a new appraisal of the Property, in accordance with this Paragraph.

b. **Maintenance of the Property During the Sale Process.** ~~Until During the timeframe prior to~~ the Property ~~being~~<sup>is</sup> sold, Settling Party shall, at its own expense: (i) maintain and make necessary repairs to the Property; (ii) keep the Property insured against loss from casualty and liability; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property.

c. **Marketing of the Property.** In any situation where Settling Party decides to attempt to sell the Property, Settling Party shall use ~~best commercially reasonable~~ efforts to ~~market and~~ sell the Property. ~~"Best efforts" for purposes of this Paragraph includes: (i) entering into a listing agreement, for the purpose of marketing and selling the property, with a real estate broker, dealer, or agent licensed in the State of Washington who customarily deals with real property similar to the Property; (ii) advertising the Property for sale in appropriate publications; (iii) listing the Property with appropriate real estate listing services; (iv) maintaining the Property in a condition suitable for showing to prospective buyers; and (v) providing access to the Property, at reasonable times, to real estate brokers, dealers or agents and prospective buyers.~~

d. If the proposed contract for the sale of ~~all or a portion of~~ the Property provides for Settling Party to receive all cash, is for at least 90% of the appraised value of the Property, and provides for the ~~property~~ sale to occur within 60 days after the date of execution of the sales contract, then Settling Party may execute the contract without EPA's prior written approval. Otherwise, Settling Party shall provide to EPA a copy of the proposed ~~Property~~ sales contract, and must obtain EPA's written approval before executing the contract. ~~EPA shall review the contract and provide written approval as soon as reasonably practicable, and shall endeavor to provide written approval within 10 days of submittal.~~ Settling Party shall provide to EPA a copy of the executed contract within 7 days after signing the contract.

e. Settling Party shall submit to EPA, at least 10 days prior to the date of the sale of the Property, a notice of the sale, Settling Party's calculation of the net sales proceeds ~~(as defined herein)~~, and all documentation regarding the values used in the calculation, including: (i) copies of all documents to be executed regarding the sale; (ii) documentation of the amounts

to be paid to holders of any liens listed as a Permitted Encumbrance in Appendix D; (iii) documentation of the amounts of closing costs to be paid; (iv) documentation of any broker's fees regarding the sale; ~~(v) the amount of any mortgages or security interests in the property;~~ and ~~(vi)~~ documentation of the amounts of State and/or municipal transfer taxes to be paid regarding the sale of the Property. Settling Party may request that EPA approve the calculation of net sales proceeds prior to the sale. In that event, EPA's approval shall be binding in any subsequent dispute between the United States and Settling Party regarding whether Settling Party has complied with Paragraph 17.f.

f. At the time of the sale, Settling Party shall pay to the United States ~~25%~~ of the net sales proceeds of the sale of the Property or ~~\$100,000~~, whichever is less. "Net sales proceeds" shall mean, for purposes of this Paragraph, all consideration received by Settling Party from the sale of the Property, not including: (i) any payment in consideration of the release of any lien listed as a Permitted Encumbrance in Appendix D, hereto; (ii) any reasonable closing costs paid regarding the sale; (iii) any reasonable broker's fees regarding the sale; ~~(iv) any payment in consideration of satisfying any mortgage or security interest in the property;~~ and ~~(v)~~ any State and/or municipal transfer taxes regarding the sale. Provided that the amount of "net sales proceeds" is acceptable, EPA shall arrange for the execution or delivery, at the time of the sale, of a release of any federal lien regarding the Property.

g. Settling Party shall not be required to comply with this Paragraph with respect to the Property or a portion of the Property, in the event the Property or such portion thereof is transferred involuntarily by operation of law, including foreclosure or its equivalent of any lien which is listed as a Permitted Encumbrance in Appendix D, or is transferred by deed or other assignment in lieu of foreclosure due to a default on indebtedness secured by the Property or such portion thereof.

h. In the event of a sale or other transfer of the Property or any portion thereof, Settling Party shall continue to be subject to all terms, conditions and benefits of this Settlement Agreement, except for Section XII (Property Requirements), to the extent ~~it~~ this Settlement Agreement requires Settling Party to provide access to, or to abide by any land, water, or other resource use restrictions regarding the Property or portion thereof that was sold or transferred. Settling Party shall continue to be subject to the requirement to enforce any agreements, pursuant to Section XII, for the new owner to provide access to the Property or portion thereof that was sold.

18. ~~Settling Party's payment(s) shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:~~

~~Federal Reserve Bank of New York~~

~~ABA = 021030004~~

~~Account = 68010727~~

~~SWIFT address = FRNYUS33~~

~~33 Liberty Street~~

~~New York, NY 10045~~

~~Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"~~



~~The payment shall reference Site/Spill ID Number 10RK and the EPA docket number for this action.~~

~~[NOTE: Regions may substitute the following instructions for payment by Automated Clearinghouse (ACH) or for online payment:~~

~~**For ACH payment:**~~

~~Settling Party shall make payment[s] to EPA by Automated Clearinghouse (ACH) to:~~

~~500 Rivertech Court  
Riverdale, Maryland 20737  
Contact John Schmid 202-874-7026 or REX, 1-866-234-5681  
ABA – 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format~~

~~The payment shall reference Site/Spill ID Number 10RK and the EPA docket number for this action.~~

~~**For online payment:**~~

~~Settling Party shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Settling Party by EPA.~~

~~**NOTE: If Settling Party has difficulty making EFT or online payments, you may substitute the following:**~~ Settling Party's shall make payment(s) by official bank check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number 10RK, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

19. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 17 (Payment of Net Proceeds of Sale of Property) shall be deposited by EPA in the Former Kaiser Smelter Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

20. **Notice of Payment.** At the time of payment, Settling Party shall also send notice that such payment has been made: (a) to EPA in accordance with Section XV (Notices and Submissions); and (b) to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

**EPA CFC by email:** [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov)

**EPA CFC by regular mail:** EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number 10RK and EPA docket number for this action.

## **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

21. **Interest on Payments.** If Settling Party fails to make the payment required by Paragraph 17 (Payment of Net Proceeds of Sale of Property) by the required due date under Paragraph 17 f, then Interest shall continue to accrue on the unpaid balance from the date payment was due through the date of payment.

### **22. Stipulated Penalty**

a. If any amounts due to EPA under Paragraph 17 (Payment of Net Proceeds of Sale of Property) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 21 (Interest on Payments), \$1,000 per violation per day that such payment is late.

b. If Settling Party fails to ~~meet any~~ substantially comply with the requirements of Section XII (Property Requirements), Settling Party shall be in violation of this Settlement Agreement and shall pay, as a stipulated penalty, \$1,500 per day for each day of failure to meet such requirements.†

c. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make all payments required by this Section to EPA by ~~Fedwire~~ EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 10RK, and the EPA docket number for this action.

d. At the time of each payment, Settling Party shall send notice that payment has been made as provided in Paragraph 20 (Notice of Payment).

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment ~~-or~~ performance

Commented [A4]: This payment method can be changed to match the earlier payment section.

is due, or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

23. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it ~~shall~~may be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

24. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of ~~the any~~ stipulated penalties or interest that have accrued pursuant to this Settlement Agreement. Settling Party's payment of interest or stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

#### **VIII. COVENANTS BY EPA**

25. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by Settling Party and the financial, insurance, and indemnity certification made by Settling Party in Paragraph 49. These covenants extend only to Settling Party and do not extend to any other person.

#### **IX. RESERVATIONS OF RIGHTS BY EPA**

26. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 25 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;

b. criminal liability;

~~c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;~~

~~d. \_\_\_\_\_ liability, based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;~~

~~e.c. \_\_\_\_\_ liability based on Settling Party's release, transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party the Effective Date; and~~

~~f.d. \_\_\_\_\_ liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant for any area or real property outside of the Site.~~

27. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information or the Insurance Information provided by Settling Party, or the financial, insurance, or indemnity certification made by Settling Party in Paragraph 49, is false or, in any material respect, inaccurate.

28. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

#### **X. COVENANTS BY SETTTLING PARTY**

29. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Washington State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

30. Except as provided in Paragraph 32 (claims against other PRPs) and Paragraph 37 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 26.a (liability for failure to meet a requirement of the Settlement Agreement) or 26.b (criminal liability), but only to the extent that Settling Party's

claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

31. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

32. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

Commented [A5]: SRC would like to discuss this language with regard to KAIC

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

33. Except as provided in Paragraph 32 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Party), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

34. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 26.a (liability for failure to meet a requirement of the Settlement Agreement) or 22.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

35. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

36. Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the

initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon Settling Party. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

37. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

38. Effective upon signature of this Settlement Agreement by- Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 34, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

## XII. PROPERTY REQUIREMENTS

39. **Agreements Regarding Access and Non-Interference.** Settling Party shall, with respect to ~~its the~~ Affected Property:

a. Provide the United States, the State, potentially responsible parties who have entered or may enter into a written agreement with the United States for performance of response actions at the Site, including but not limited to Kaiser Aluminum Investment Company, (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors with access at all reasonable times to ~~its the the~~ Affected Property to conduct any activity relating to response actions at the Site ~~including the following activities: Verifying any data or information submitted to the United States or the State, including the following activities:~~

(1) Verifying any data or information submitted to the United States or the State;

~~(+)~~(2) Conducting investigations regarding contamination at or near the Site;

~~(2)~~(3) Obtaining samples;

- ~~(3)~~(4) Assessing the need for, planning, implementing, or monitoring response actions;
- ~~(4)~~(5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIII (Access to Information);
- ~~(5)~~(6) Assessing Settling Party's compliance with the Settlement Agreement;
- ~~(6)~~(7) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- ~~(7)~~(8) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using ~~its~~the Affected Property in any manner that EPA has ~~determines~~d in writing will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances, or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

- (1) Prohibiting ~~the following~~ activities which ~~could~~will interfere with response actions at the Site;
- ~~(1)~~(2) ~~Permitting any continued or future~~ discharge of stormwater ~~from~~ Parcel Number 36165.9016 through the conveyance system and into the sediment ~~ponds~~ located on Parcel Number 36096.9063; and
- ~~(2)~~(3) Ensuring that requirements for operation and maintenance for any newly constructed stormwater conveyance system on the Affected Property are met.

~~39-40.~~ If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Party shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

~~40-41.~~ Within x days of the Effective Date, Settling Party shall revoke the easement that provides for stormwater conveyance from Parcel Number 36165.9016 to through the sediment ponds located on Parcel Number 36096.9063, in order to maintain the integrity the removal activities selected in the Action Memoranda for the Site.

Commented [A6]: This timeframe needs to be selected taking technical details into account, so I propose we leave it blank for now and come back to it once we have a better handle on the timing for field work.

#### ~~41-42.~~ Notice to Successors-in-Title

a. Settling Party shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the ~~Affected~~ Property in the appropriate land



records. The notice must: (1) include a proper legal description of the ~~Affected~~ Property; (2) provide notice to all successors-in-title: (i) that the ~~Affected~~ Property is part of, or related to, the Site; (ii) that EPA has selected a response action for the Site; and (iii) that potentially responsible parties are required to implement the response action; and (3) identify the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Settling Party shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Settling Party shall, prior to entering into a contract to ~~Transfer its~~ ~~Affected all or a portion of the~~ Property, or 60 days prior to Transferring ~~its Affected all or a portion of the~~ Property, whichever is earlier:

- (1) Notify the proposed transferee that EPA performed or has selected a response action regarding the Site, that potentially responsible parties are required to implement response actions regarding the Site, including information identifying the document requiring such implementation,; and
- (2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

**Commented [A7]:** We would prefer not to have to perform these tasks for every lease. Would like to discuss a requirement that each lease be crafted in a manner that ensures compliance with the terms and conditions of this Agreement, or the terms and conditions of any separate PPA negotiated for future tenants.

~~42-43.~~ In the event of any Transfer of the ~~Affected~~ Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement.

~~43-44.~~ Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

### XIII. ACCESS TO INFORMATION

~~44-45.~~ Settling Party shall provide to EPA, upon request, copies of all ~~non-privileged or non-protected~~ records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

#### ~~45-46.~~ Privileged and Protected Claims

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 46.b, and except as provided in Paragraph 46.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title,



affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Party shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Settling Party shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party's favor.

- c. Settling Party may make no claim of privilege or protection regarding:
  - (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
  - (2) the portion of any Record that Settling Party is required to create or generate pursuant to this Settlement Agreement.

**46.47. Business Confidentiality Claims.** Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XIV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

**47.48.** Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XIV. CERTIFICATION**

**48.49.** Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Party's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;
- b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially

changed between the time the financial information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

#### XV. NOTICES AND SUBMISSIONS

49-50. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

**As to EPA:** Brooks Stanfield, On-Scene Coordinator  
1200 Sixth Ave., Suite 155, M/S: 13-J07  
Seattle, Washington 98101  
Stanfield.brooks@epa.gov

**As to Settling Party:** Paramjit Hothi & Davinder Hothi  
Spokane Recycling Company LLC  
2111 East Hawthorne  
Spokane, WA 99218  
(b) (6)

And to:

Ken Lederman  
Foster Garvey PC  
1111 3<sup>rd</sup> Avenue, Suite 3000  
Seattle, WA 98101  
Ken.lederman@foster.com

#### XVI. INTEGRATION/APPENDICES

50-51. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is a list of the financial documents submitted to EPA by Settling Party.

“Appendix B” is a list of the insurance documents submitted to EPA by Settling Party.

“Appendix C” is a map of the Site.

“Appendix D” is the list of Permitted Encumbrances on the Property.

#### **XVII. PUBLIC COMMENT**

~~51-52.~~ This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

#### **XVIII. EFFECTIVE DATE**

~~52-53.~~ The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 52 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

#### **U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Beth Sheldrake  
Acting Branch Chief  
Emergency Management Branch, Region X

Signature Page for Settlement Agreement Regarding Former Kaiser Smelter Superfund Site

**U.S. DEPARTMENT OF JUSTICE:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
[Name]  
Deputy Section Chief  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
Washington, D.C. 20044-7611

\_\_\_\_\_  
[Name]  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611

Signature Page for Settlement Agreement Regarding Former Kaiser Smelter Superfund Site

**FOR** \_\_\_\_\_:  
Spokane Recycling Company, LLC

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Paramjit Hothi  
Governor  
Spokane Recycling Company, LLC  
2111 East Hawthorne  
Spokane, WA 99218